



UNITED STATES PATENT AND TRADEMARK OFFICE

NU

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,883	02/24/2004	Manfred Feustel	100868.53189US	9950
23911	7590	11/23/2004	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			CYGAN, MICHAEL T	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/784,883	FEUSTEL, MANFRED
	Examiner	Art Unit
	Michael Cygan	2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6,8,11-14 and 17-20 is/are rejected.
- 7) Claim(s) 7,9,10,15 and 16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 February 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>02/24/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 11, 13, 14, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Skytt (Poly. Eng. Sci. 1996). Skytt discloses the claimed invention, an apparatus for determining rheological properties such as viscosity comprising two IR-transparent ZnSe disks rotating relative to each other at a selectable distance (one disk movably driven) and holding between them the substance to be analyzed, the substance heated by a heater connected to a disk, the analysis being infrared spectroscopic simultaneous with rheological measurement. Since the disks are wholly transparent, multiple light passages are available. The control unit of the apparatus compares gathered data to known viscosity data. See entire document, especially pages 1738-1742.

Claims 1-3, 5, 8, 11-14, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsuzaka (Rev. Sci. Instrum. 1999). Matsuzaka discloses the claimed invention, an apparatus for determining rheological properties such as viscosity comprising two transparent disks rotating relative to each other at a

selectable distance (one disk movably driven) and holding between them the substance to be analyzed, the substance heated by a heater connected to a disk, the analysis being infrared spectroscopic simultaneous with rheological measurement. Since the disks are wholly transparent, multiple light passages are available. One disk may be a cone plate. The control unit of the apparatus compares gathered data to known viscosity data. See entire document, especially pages 2387-2390 and Figure 13.

Allowable Subject Matter

Claims 7, 9, 10, 15, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the features of ATR, reflection surfaces, and inclined surfaces are neither disclosed nor fairly taught by the prior art when considered with the other positively recited features of the claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Khan (US 5,105,655), Ikeda (US 4,936,674), and Parshall (US 5,905,196).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cygan whose telephone number is (571) 272-2175. The examiner can normally be reached on 8:30-6 M-Th, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL CYGAN, PH.D.
PRIMARY EXAMINER